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PATENT  
Docket No. 1254-0191P

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANTS: Akio MATSUDA et al. CONF.: 3320  
APPLN. NO.: 10/024,298 GROUP: Unknown  
FILED: December 21, 2001 EXAMINER: Unknown  
FOR: NF- $\kappa$ B ACTIVATING GENE

**PETITION PURSUANT TO 37 CFR § 1.181  
FOR WITHDRAWAL OF NOTICE OF INCOMPLETE APPLICATION  
AND REQUEST FOR FILING DATE**

**PETITIONS BRANCH**

Assistant Commissioner of Patents  
Washington, DC 20231

August 23, 2002

Sir:

In response to the Notice of Incomplete Nonprovisional Application dated June 6, 2002, Applicants hereby Petition under 37 CFR 1.181 to be accorded a filing date of December 21, 2001. This Petition was discussed with Petitions Examiner Randy Green on August 19 and 20, 2002. Examiner Green suggested that this paper be filed as a Petition for a filing date. Applicants greatly appreciate the helpful comments provided by Examiner Green with respect to this Petition.

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**STATEMENT OF FACTS**

**Background**

On December 21, 2001, a new patent application was filed in the Japanese language that contained everything necessary for a filing date, including a specification, claims and abstract.

In addition, on December 21, 2001, an amendment was made to the specification whereby the disclosures of several provisional applications were incorporated by reference. In this regard, reference is made to the amendment to specification requested on page 2 of the application transmittal papers. A complete copy of the application transmittal papers is attached hereto as Exhibit 1. Copies of the English language versions of all three provisional applications are attached hereto as Exhibits 2-4.

On April 23, 2002, an English translation of the application papers was filed.

**Notice of Incomplete Nonprovisional Application**

On June 6, 2002, a Notice of Incomplete Nonprovisional Application was filed due to the lack of Drawings and lack of a Sequence Listing. The Notice was correct in indicating that the application papers as filed did not contain drawings or a sequence listing (except by incorporation by reference). However, for the reasons discussed below, these items were not necessary for a filing date.

**Drawings**

The patent application was filed without drawings. At least some of the referenced drawings were filed in related provisional applications, which were incorporated by reference when this application was filed (see page 2 of the application transmittal letter, Exhibit 1). For the time being, the USPTO is requested to process this application without drawings and to issue an Official Filing Receipt indicating a filing date of December 21, 2001. Applicants will consider adding these drawings at a later date by way of amendment during prosecution before the Examiner.

**Sequence Listing**

This application was also filed without a Sequence Listing, although reference is made in the specification concerning various sequences. At least some of the sequences were filed in related provisional applications, which were incorporated by reference when the present application was filed (see page 2 of the application transmittal letter, Exhibit 1). For the time being the USPTO is requested to process this application without a Sequence Listing, since no sequences are included in the application as filed, except by "incorporation by reference". Applicants will add the appropriate Sequences by way of Amendment during subsequent ex part prosecution before the Examiner.

**Oath**

Since the above items (drawings and sequences) are not being submitted at this time, a new oath or declaration is not necessary.

**Point or Points to be Reviewed**

The PTO is requested to withdraw the Notice of Incomplete Nonprovisional Application for the above reasons. The application papers as filed included everything necessary for a filing date.

**Action Requested**

The PTO is requested to issue a filing receipt showing a filing date of December 21, 2001, since the original application papers contained everything necessary for a filing date and for a complete disclosure.

The Petition fee in the amount of \$130.00 is attached hereto. Applicants also request a refund of this fee in view of the fact that the application papers as filed contained all of the papers necessary to obtain a filing date.

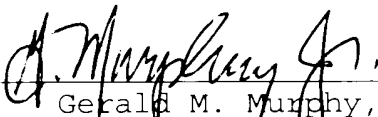
Applicants respectfully request an extension of time, if necessary, for filing this Petition in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

BIRCH, STEWART, KOLASCH & BIRCH, LLP

By



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Enclosures:

- Exhibit 1 - Copy of page 2 of Application Transmittal Letter
- Exhibit 2 - Copy of English Translation of U.S. Provisional Application No. 60/258,315
- Exhibit 3 - Copy of U.S. Provisional Application No. 60/278,640
- Exhibit 4 - Copy of English Translation of U.S. Provisional Application No. 60/314,385